

**UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**HIGH COURT OF TANZANIA**

**BUKOBA SUB REGISTRY**

**AT BUKOBA**

**CRIMINAL APPEAL NO. 14 OF 2023**

*(Arising from the Criminal Case No. 77 of 2019 of Ngara District Court)*

**ERICK HIGILUKWISHAKA.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

Date of last Order: 15/02/2024

Date of Ruling: 23/02/2024

**BEFORE: G.P. MALATA, J**

The appellant, **Erick Higilukwishaka**, appealed to this court against the conviction and sentence by Ngara District Court in criminal Case No. 77 of 2019 for unlawful cultivation of cannabis sativa c/s 11(1) (a) (c) and (2) of the year Drugs Control and Enforcement Act, Cap.95 R.E.2019. The appellant was convicted and sentenced upon his own unequivocal plea of guilty. The appellant came to this court armed with 10 grounds of appeal challenging conviction.

On 15/02/2024 the appeal came for hearing and the appellant appeared in person whereas the Republic appeared through MS. Matilda Assey learned State Attorney.

Submitting in support of the 1<sup>st</sup> ground of appeal, the appellant stated that, the trial proceedings was conducted in the language not well conversant to the appellant. That the appellant being not conversant with Kiswahili and English used in the proceeding, as Burundian by citizen not conversant with such language, the court was required to find interpreter for Kiswahili and English to Kirundi and vice versa the language well understood to the appellant. Thus, there was denial of right to be heard.

In support of ground two, three and nine, the appellant submitted that, they all share similar submission with ground one.

Regarding ground four of appeal, the appellant submitted that, there is no extra judicial statement ever been tabled to support the Cautioned Statement as such the cautioned statement was in admissible and contained false story. Thus, it be found in admissible.

On ground five of the appeal, the appellant submitted that, there is no evidence that, the appellant was arrested with any exhibit and no exhibit was tendered in court to wit Cannabis Sativa. Thus, there was no enough evidence to convict the appellant.

In support of ground six of appeal, the appellant submitted that, the chain of custody of the seized Cannabis Sativa. Further that, the owner of the farm was not summoned to witness the cannabis and confirm who is the owner and also did not testify before the court. I was just engaged to weed the farm.

As to the seven grounds of appeal, he submitted that, there was no Government chemist report that, the seized item was cannabis sativa.

In support of ground eight of appeal, there was no sketch map of the scene of crime tendered in court proving that, the said cannabis sativa was gathered from that place.

Regarding ground ten of appeal, the appellant submitted that the offence was not proven beyond reasonable doubt as there was no prove of cannabis sativa (Government Chemist) and no exhibit tendered.

Finally, he submitted that, the owner of the farm was not involved in anyway.

He thus prayed, the appeal to be allowed.

In reply thereof, Ms. Matilda Assey learned State Attorney, started by stating that they resist the appeal. She consolidated grounds 1, 2, 3 and 9 and argued together. Submitting in opposition thereof, Ms. Matilda stated that, the appellant was conversant with Kiswahili the language used in conducting the proceeding. She referred this court on page 1 of the proceedings which reads;

*"I understand Kiswahili"*

It was argued further that, throughout the accused spoke Kiswahili and pleaded in Kiswahili.

It is not true that, he did not understand Kiswahili thus section 211 (1) of the Criminal Procedure Act, Cap. 20 R.E 2019 was complied with. Thus, the grounds are baseless.

Regarding ground four, she submitted that, there is no legal requirement that cautioned statement must be supported by extra judicial statement for it to be admissible. However, the cautioned statement was not tendered as an exhibit in court as the appellant was convicted upon his own plea of guilty.

The above submission goes to ground five that, the case did not go for trial, thus the non-tendering of the documentary exhibit including, cautioned statement, Cannabis Sativa, Sketch map and certificate to seizure.

Ms. Matilda Assey learned State Attorney echoed further that, there is no legal requirement that, if the accused pleads guilty to the offence, the gathered exhibits must be tendered. She referred this court to the case of **Frank Mlyuka Vs. Republic**, Criminal Appeal No. 404 of 2018 where the court of appeal held that;

*"Tendering of exhibit where conviction is based on a plea of guilty is not a legal requirement".*

Where the accused pleads guilty the plea will be used to convict him/her.

Ms. Matilda Assey learned State Attorney submitted that, grounds No. 6, 7, 8 and 10 are covered to the submission in opposition of ground five of appeal. The trial Court properly adopted procedures in convicting and sentencing the accused upon unequivocal plea of guilty of the appellant.

It is trite law that, where the accused pleads guilty to the offence and convicted accordingly, then he can only challenge sentence and not conviction. This stressed in section 360 (1) of the Criminal Procedure Act, Cap. 20 R.E 2022.

As the appellant is appealing against the conviction founded on unequivocal plea of guilty then he is legally barred from appealing against conviction save for sentence which is not at issue by the appellant.

Finally, Ms. Matilda Assey learned State Attorney prayed for dismissal of appeal for lack of merits.

Having gathered parties concern in the present appeal, this court has established three pertinent issues to be decided in this case. These are;

1. Whether the appellant was convicted upon his own unequivocal plea of guilty;

2. Whether the appellant understand the nature of charges and proceeding to the end;
3. Whether the appellant has right to challenge conviction entered upon unequivocal plea of guilty.

To start with, this court will highlight some conditions for unequivocal plea of guilty as propounded by the court of appeal. In the case of **Michael Adrian Chaki v. R, Criminal Appeal No. 399 of 2017 (unreported)**, the Court stated that there cannot be an unequivocal plea on which a valid conviction may be founded unless these conditions are conjunctively met:-

*"1. The appellant must be arraigned on a proper charge. That is to say' the offence, section and the particulars thereof must be properly framed and must explicitly disclose the offence known to law;*

*2. The court must satisfy itself without any doubt and must be dear in its mind, that an accused fully comprehends what he is actually faced with, otherwise injustice may result;*

*3. When the accused is called upon to plead to the charge, the charge is stated and fully explained to him before he is asked to state whether he admits or denies each and every particular ingredient of the offence. This is in terms of section 228(1) of the CPA;*

*4. The facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged;*

*5. The accused must be asked to plead and must actually plead guilty to each and every ingredient of the offence charged and the same must be properly recorded and must be clear;*

*6. Before a conviction on a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclose or establish all the elements of the offence charged"*

I will, in turn meticulously examine at close range and with keen attention, the proceedings of the District Court dated 4<sup>th</sup> September, 2019 to find out whether the above conditions were met, and determine whether the District Court correctly directed his mind before arriving to appellant's conviction and sentence.

This court has gone through the trial court's record and submission, and noted that; **one**, the appellant was charged for being found in unlawful cultivation of 115 of cannabis sativa plants contrary to section 11(1) (a) (c) and (2) of the Drugs Control and Enforcement Act, Cap.95 R.E.2019, **two**, the charge contains statement of offence, particular of offence such as; name of the accused, residence/place, date, month, year, offence and quantity of cannabis sativa plants, **three**, appellant was asked whether he understand Kiswahili language as he is a Burundian by citizen and in return he replied that he understand

Kiswahili and the court recorded accordingly, **four**, the charge was read and explained in Kiswahili, the language the appellant confirmed to the court to be conversant with, **five**, upon being called to plead thereto, the appellant unequivocally pleaded guilty to the offence, **six**, the court recorded the appellant's plea of guilty to the offence in the words he used and entered plea of guilty (E.P.G), **seven**, both the court and appellant sign just below the plea, **eight**, the trial court caused the facts of offence to be read to the accused by the Public Prosecutor and explained to the appellant, **nine**, upon the facts being read over and explained to the appellant, he confirmed to the court that the facts are true as narrated, **ten**, the court recorded the plea accordingly, **eleven**, the appellant signed the court proceedings confirming what he pleaded thereto, **twelve**, the court entered conviction against the appellant upon his own unequivocal plea of guilty as charged, **thirteen**, the court sentenced the appellant to serve thirty (30) years imprisonment as mandatorily imposed by section 11(1) (a) (c) and (2) of the Drugs Control and Enforcement Act, Cap.95 R.E.2019.

In view thereof, the facts stated from page 1 to 3 of the trial court's proceeding as typed from the handwritten proceedings represents nothing but what the appellant freely pleaded before the court. The trial court entered conviction and



sentence after full compliance of section 228 (1) and (2) of the Criminal Procedure Act, Cap.20 R.E.2022. The section reads;

*(1). The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.*

*(2) Where the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses **and the magistrate shall convict him and pass sentence** upon or make an order against him, unless there appears to be sufficient cause to the contrary.*

This court is therefore satisfied beyond sane of doubt that, the appellant was convicted and sentence upon his own unequivocal plea of guilty. Good still, the appellant was placed before a free justice dispensing authority thus his statement was nothing but affirmation and confirmation of truth of what happened.

In that regard, I settle the position with guidance of the case of **Nyerere Nyague Vs Republic, Criminal Appeal No. 67 Of 2010** where the court of appeal held that;

*"a confession made in court is of greater effect than any other proof"*

The allegation by the appellant that being a Burundian by citizen did not understand the nature of charge and proceeding as it were conducted in Kiswahili is unfounded based on what is on record in which the appellant confirmed to the court to understand Kiswahili language. The allegations presented through the appellant's grounds of appeal are mere afterthought. The above position settles issue no.1 and 2.

The last issue is on whether the appellant has right to challenge conviction entered upon unequivocal plea of guilty.

The answer to above posed issue is gathered from section 360 (1) of the Criminal Procedure Act, Cap.20 R.E.2022 which reads;

*"An appeal shall not be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence"*

In view thereof, since the appellant pleaded guilty to the offence ruled herein above, he is legally barred from appealing against conviction save for sentence. The nature of plea of guilty by the appellant has been proven to be unequivocal one, thus there is no escape door by the appellant from the conviction and sentence.


Moreover, this court noted that, the appellant raised grounds of appeal as if the matter went through full trial, undoubtedly, he missed the boat from the start as he is barred by section 360 (1) of the Criminal Procedure Act, Cap.20 R.E.2022.

All said and done, I am inclined to agree with Ms. Matilda Assey learned State Attorney that, the appellant is barred from appealing against conviction entered upon his own unequivocal plea of guilty.


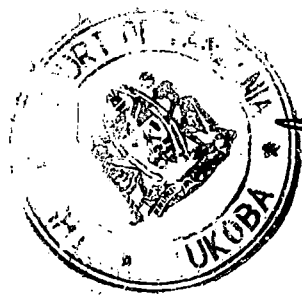
In the event, I hereby rule that the appeal has no merits and it is accordingly dismissed for lack of merits.

**IT IS SO ORDERED.**

**DATED** at **BUKOB**A this 23<sup>rd</sup> February, 2024.

  
G.P. Malata  
**JUDGE**  
23/02/2024

**JUDGMENT** delivered at **BUKOB**A this 23<sup>rd</sup> February, 2024 in the presence of Appellant and Ms. Alice Mutungi learned Sate Attorney for the Republic.

  
G.P. Malata  
**JUDGE**  
23/02/2024